IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

L.P.A. NO. 247 OF 2005
in
WRIT PETITION NO. 5631 OF 1995

Ashok D. Dhumal,
age 48 years, r/ at. Bhairavanath
Pimple-Gurav, Pune 411 027. .... Petitioner
V/S
Bajaj Auto Limited,
having it's Registered Office at
Akurdi, Pune 411 035 ... Respondents

Ms. Seema Sarnaik for appellant
Ms.Swati Deshpande with J.P. Kama i/b.
M.S. Bodhanwalla & Co, for respondents.

CORAM: R.M.S. KHANDEPARKAR
&
MRS. ROSHAN DALVI JJ.

RESERVED DATE: 16 /03/2006
DELIVERED ON: 12/04/2006

ORAL JUDGMENT : (Per ROSHAN DALVI J.)

1. The appellant has challenged the order of the learned Single Judge in writ petition no. 5631 of 2005 quashing the order of the Labour Court, Pune, in Reference (IDA) No. 36 of 1990. The appellant was employed as a helper with the respondents from time to time for short periods. The last

such appointment was from 26.3.1988 to 30.11.1988. There has been no fresh appointment order issued by the respondents in favour of the appellant thereafter. The appellant claims to be reinstated on the basis that he was a permanent employee of the respondents, he having completed 240 days of service with them.

2. The respondents claimed that the appellant was on a contract of service on temporary basis and on daily rated wages on the expiration of which the Management of the respondents were not enjoined to renew the contract. The respondents claimed not to have renewed the contract on account of no demand for such contract work after 30.11.1988.

3. All the contentions of the appellant are based primarily upon the contention that he acquired permanency of employment upon having completed 240 days of continuous service. It is therefore for the appellant to show that he had completed 240 days of service.

4. On arithmetical calculation of the period between 26.3.1988 and 30.11.1988 on daily rated wages, without counting any

weekly-off this would come to 207 days. The Labour Court in Reference No. 36 of 1990 counted the number of days put in by the appellant at 215 + 36 days on account of weekly-offs.

5. The learned Single Judge was to consider in the writ petition whether there was any gross error in such computation.

6. The learned Single Judge has considered that the appellant was governed by the Government Resolution dated 22.7.1998 fixing the minimum rate of wages for the Engineering Industry on monthly basis for appointment of daily wage earners. Under clause 3 of the GR, the minimum rates payable would be the wages divided by 26 and not 30, in each month. It is shown that the weekly-offs had to be disregarded for the employees like the appellant. The learned Single Judge has correctly shown the computation applicable to the workmen which excludes the entitlement of weekly-offs. Hence the computation of the number of days worked arrived at by the appellant and held by the Labour Court is erroneous. Consequently the appellant's claim to the interpretation of section 2 (oo)(pp) of the Industrial Disputes Act and the reliance upon the case of American Express

International Banking Corporation vs. Management of American Express International Banking Corporation, reported in **AIR 1986 SC 458** fails.

7. The appellant cannot be given the benefit of weekly-offs. He therefore is not seen to have put in 240 days of continuous service. That being the case it is not necessary to go into the details of evidence with regard to his demand for work, reinstatement, retrenchment etc.

8. In the result the appeal fails and is dismissed with no order as to costs.

(MRS ROSHAN DALVI J) (R.M.S. KHANDEPARKAR J.)